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See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

YOLANDA C.,)	2 CA-JV 2012-0054
)	DEPARTMENT A
Appellant,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 28, Rules of Civil
ARIZONA DEPARTMENT OF ECONOMIC)	Appellate Procedure
SECURITY, ELENA C., ELI'YANA C.,)	
EALIYAH C., ELYSSIA C., AUBRE'YANA)	
C., and ANTHONY C. III,)	
)	
Appellees.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. S1100JD200900040

Honorable Kevin D. White, Judge

AFFIRMED

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ECKERSTROM, Presiding Judge.

¶1 Yolanda C. appeals from the juvenile court's May 2012 order terminating her parental rights to her six children on the ground of persistent and disabling mental illness and chronic substance abuse.¹ See A.R.S. § 8-533(B)(3). She argues the evidence was insufficient to support termination on this ground. For the following reasons, we affirm.

Background

¶2 In an appeal from an order terminating parental rights, we view the evidence in the light most favorable to sustaining the juvenile court's ruling. *Lashonda M. v. Ariz. Dep't of Econ. Sec.*, 210 Ariz. 77, ¶¶ 1, 13, 107 P.3d 923, 925, 928 (App. 2005). In March 2009, Child Protective Services (CPS), a division of the Arizona Department of Economic Security (ADES), took temporary custody of Yolanda's children and, in April 2009, ADES filed a dependency petition alleging she had neglected the children; had exposed them to domestic violence between her and their father, Anthony C.;² had failed to comply with a safety plan for them; and was unemployed and lacked resources to provide for them. ADES also alleged Yolanda was unable to parent as a result of her substance abuse, based in part on reports that, while enrolled in substance abuse counseling, she had tested positive for methamphetamine, amphetamine, cocaine,

¹From oldest to youngest, the children are Elena C. (born in March 1999), Eli'yana C. (born in May 2003), Ealiyah C. (born in February 2005), Elyssia C. (born in February 2006), Aubre'yana C. (born in July 2007), and Anthony C. III (born in January 2009).

²Anthony C.'s parental rights have also been terminated; his appeal has been dismissed. *Anthony C. v. Ariz. Dep't of Econ. Sec.*, No. 2 CA-JV 2012-0056 (dismissal order filed Aug. 21, 2012).

and opiates. When Yolanda failed to appear at a continued dependency hearing, despite notice and without good cause, the juvenile court adjudicated the children dependent based on the verified dependency petition.

¶3 In September 2009, psychologist Carlos Vega evaluated Yolanda and diagnosed cocaine dependence, depressive disorder not otherwise specified (NOS), and personality disorder NOS with salient Cluster B features, which he later described as “antisocial and borderline features” including irresponsibility and instability. Vega concluded that “[t]hese conditions have played a major role in [Yolanda’s] capacity to provide adequate care for her children” and opined that she was “completely out of control when it comes to the continued use of drugs.”

¶4 Over the course of more than two years, ADES provided services to Yolanda that included psychological and psychiatric evaluations and psychological consultations; inpatient and intensive outpatient substance-abuse treatment, aftercare substance-abuse services, and random urinalysis testing; individual, family, and group counseling, including domestic-violence and anger-management counseling; and parenting classes, parent-aide services, supervised visitation, and Child and Family Team meetings.

¶5 After testing positive for cocaine use in February 2010, Yolanda completed a forty-five day inpatient substance abuse program in May, but did not begin her compliance with random urinalysis until the end of June, and then tested positive for substance use in June, August, and September 2010. From September 2010 to January

2011, Yolanda was provided with and engaged in Dialectical Behavioral Therapy, a treatment modality chosen for its potential to address the type of personality disorder features Vega had observed. But Yolanda's participation in this and other aftercare services then began to "taper[] off."

¶6 In a second psychological evaluation conducted in February 2011, Vega noted Yolanda's continued problems with substance abuse, employment, her relationship with the children's father, and her minimization of the relapses that she had experienced. Although ADES had begun permitting Yolanda unsupervised contact with some of the children, her treatment providers soon expressed considerable reservation about that choice, noting strong suspicions that Yolanda had "significant personality pathology," as noted by Dr. Vega in a March 2011 Consultation Note. That same month, ADES moved to establish permanent guardianships for the five oldest children and to terminate Yolanda's parental rights to her youngest child, Anthony.

¶7 In September 2011, at a hearing on ADES's motions, the juvenile court discovered ADES had failed to comply with its disclosure obligations and dismissed the dependency proceeding. The children were never returned to Yolanda's physical custody, however, because the children's attorney filed another dependency petition within hours of the court's dismissal order, and ADES regained temporary legal custody of the children that same day. Although ADES had continued to offer services to Yolanda, her participation in those services, which had diminished substantially over the previous months, finally ended in November 2011, despite her counselor's efforts to reengage her.

¶8 In December 2011, Yolanda submitted to a hair-follicle test, and it indicated she had used methamphetamine during the past two months. ADES moved for an order terminating her parental rights to all six children, alleging under A.R.S. § 8-533(B)(3) that she was unable to discharge her parental responsibilities due to mental illness or a history of chronic abuse of dangerous drugs, controlled substances, or alcohol and that there were reasonable grounds to believe that such condition would continue for a prolonged indeterminate period.

¶9 After a contested termination hearing that spanned nine days, the juvenile court terminated Yolanda's parental rights. In its under advisement ruling, the court summarized its findings regarding § 8-533(B)(3) as follows:

a. [Yolanda] is unable to discharge her parental responsibilities because of mental illness and there are reasonable grounds to believe that the condition will continue for a prolonged and indeterminate period. Dr. Carlos Vega diagnosed [Yolanda] as having a pervasive personality disorder with cluster "B" features. The Department has made extensive and entirely reasonable efforts to provide [her] with rehabilitative services. Since 2009, [Yolanda] has been offered numerous services including counseling services (including Dialectical Behavioral Therapy ["DBT"]), substance abuse treatment, psychiatric medication monitoring, family therapy, supervised visitation and parent aide services. Dr. Carlos Vega has conducted multiple psychological evaluations and consultations regarding [Yolanda]. Based on Dr. Vega's well grounded opinion, [Yolanda] is currently unable to minimally and adequately parent due to her personality disorder, and there are reasonable grounds to believe that she will not be able to do so at any time in the future. Dr. Vega's opinions are supported by Leticia Martinez, who provided DBT therapy to [Yolanda] to address her personality disorder. Ms. Martinez shares the view that

[Yolanda]’s prognosis for stabilization of her personality disorder is poor.

b. [Yolanda] is unable to discharge her parental responsibilities because of a history of chronic substance abuse of dangerous drugs, controlled substances and alcohol and there are reasonable grounds to believe that the condition will continue for a prolonged and indeterminate period. Her history of substance abuse began at age 15 and has continued throughout most of her life. The Department has made reasonable efforts to provide [Yolanda] rehabilitative services. [She] has been provided with substance abuse treatment and counseling since the children were removed from her care in 2009. Despite these efforts, [Yolanda] has been unable to maintain her sobriety. She has relapsed multiple times during the period that services have been offered to her. She tested positive for methamphetamine and amphetamine as recently as December 5, 2011. Based on her long history of substance abuse, her relapses since services have been provided, and the opinions of Dr. Vega and her therapist Shanda Cooper, it is clear that her substance abuse is chronic and likely to continue for a prolonged and indeterminate period.

Discussion

¶10 On appeal, Yolanda argues ADES failed to establish grounds for termination pursuant to § 8-533(B)(3) because she “had completed both in-patient and intensive out-patient substance abuse treatment and was only construed to have suffered one relapse in the eighteen months prior to trial,” had completed domestic violence counseling and had filed for a divorce from Anthony, and had demonstrated “significant progress” in therapy. She also asserts ADES “failed to marshal requisite evidence of [her] inability to discharge her parental responsibilities” and failed “to make reasonable

efforts to reunify [the] family” after the initial dependency was dismissed in September 2011.

¶11 We accept the juvenile court’s findings of fact as long as there is reasonable evidence to support them. *Denise R. v. Ariz. Dep’t of Econ. Sec.*, 221 Ariz. 92, ¶ 4, 210 P.3d 1263, 1264 (App. 2009). As the trier of fact, that court “is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts.” *Ariz. Dep’t of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 4, 100 P.3d 943, 945 (App. 2004). We do not reweigh the evidence. *See Lashonda M.*, 210 Ariz. 77, ¶ 13, 107 P.3d at 927. Rather, we affirm the court’s order ““unless we [can] say as a matter of law that no one could reasonably find the evidence [supporting statutory grounds for termination] to be clear and convincing.”” *Denise R.*, 221 Ariz. 92, ¶ 10, 210 P.3d at 1266, *quoting Murillo v. Hernandez*, 79 Ariz. 1, 9, 281 P.2d 786, 791 (1955) (second alteration in *Denise R.*).

¶12 Pursuant to § 8-533(B)(3), termination, if in the best interests of a child,³ is warranted upon a finding by clear and convincing evidence “[t]hat the parent is unable to discharge parental responsibilities because of mental illness, mental deficiency or a history of chronic abuse of dangerous drugs, controlled substances or alcohol and there are reasonable grounds to believe that the condition will continue for a prolonged indeterminate period.” ADES must also establish this ground for termination exists

³Yolanda does not challenge the juvenile court’s finding that termination is in the children’s best interests.

despite its reasonable efforts to reunify the family. *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, ¶ 33, 971 P.2d 1046, 1053 (App. 1999).

¶13 We conclude ample evidence supports the juvenile court's detailed findings in this case and agree with ADES that, in essence, Yolanda "implicitly and improperly asks this [c]ourt to reweigh the evidence." See *Lashonda M.*, 210 Ariz. 77, ¶ 13, 107 P.3d at 927. As observed in *Raymond F. v. Ariz. Dep't of Econ. Sec.*, a parent's "drug abuse need not be constant to be considered chronic" for purposes of § 8-533(B)(3). 224 Ariz. 373, ¶ 16, 231 P.3d 377, 381 (App. 2010). Thus, "[i]t is not the number of times that [a parent] has tested positive or negative for drug abuse that is key, but rather, it is the fact that [the parent] has consistently failed to abstain from drugs and alcohol." *Id.* ¶ 29 (emphasis omitted). Here, Vega opined that, based on his evaluations and consultations with other service providers, Yolanda's "personality pathology and substance abuse disorders are so pernicious that she will never be in a position to minimally and adequately parent a child."

¶14 Furthermore, the evidence reasonably supports the trial court's finding that ADES made reasonable reunification efforts. Vega testified "the data demonstrate that [she] is unlikely to ever profit from therapy." Thus, Vega reported he was "convinced that all that could be done for Yolanda has been done for her." See *Mary Ellen C.*, 193 Ariz. 185, ¶¶ 34, 37, 971 P.2d at 1053 (obligation of reasonable reunification efforts does not require ADES to "provide 'every conceivable service'" or to "undertake rehabilitative

measures that are futile”), quoting *In re Maricopa Cnty. Juv. Action No. JS-501904*, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994).

Disposition

¶15 The juvenile court’s order terminating Yolanda’s parental rights is supported by the evidence and is therefore affirmed.

/s/ Peter J. Eckerstrom

PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

/s/ Joseph W. Howard

JOSEPH W. HOWARD, Chief Judge

/s/ Philip G. Espinosa

PHILIP G. ESPINOSA, Judge